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INTERNATIONAL NARCOTICS CONTROL AND FOREIGN ASSISTANCE CERTIFICATION: REQUIREMENTS, PROCEDURES, TIMETABLES, AND GUIDELINES

REPORT

PREPARED FOR THE USE OF THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

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FOREWORD

This study provides a detailed explanation of the International Narcotics Control Certification Process. It was prepared by Mr. Raphael Perl of the Foreign Affairs and National Defense Division of the Congressional Research Service, to whom the Committee wishes to express their appreciation.

CLAIBORNE PELL,
Chairman, Committee on Foreign Relations.
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Chairman, Subcommittee on Terrorism, Narcotics and International Operations.

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I. BACKGROUND

Congressional interest and concern with international narcotics control has led to the enactment of increasingly stringent statutory sanctions against major drug producing and drug trafficking countries. This concern culminated in the passage of the Anti-Drug Abuse Act of 1986[1] which applies mandatory foreign aid and discretionary trade sanctions against major offending countries.

To guide the Administration in determining whether to invoke these sanctions, Congress established detailed criteria and procedures for evaluating illicit drug related activities and remedial steps taken by major illicit drug producing or trafficking nations. Congress further directed the President to sanction offending countries unless he determines and reports to the Congress on, or after, March 1 of each year that these countries are cooperating with U.S. international narcotic control efforts, or that applying sanctions would be contrary to the U.S. vital national interest.

Sanctions include a 50% withholding of bilateral aid in fiscal year 1988, and U.S. votes against multilateral development bank loans to these countries. At his discretion, the President may also impose trade sanctions including duties, loss of tariff benefits, and suspension of air service. Congress can reverse a Presidential determination by passage of a joint resolution of disapproval within 45 days following receipt of the March 1st submission.

This report describes the process by which the President issues his determination and sets out the timetable for Congressional action.

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[1]Public Law 99-570.

II. PRESIDENTIAL REQUIREMENTS AND RESPONSIBILITIES

Determination that a nation is a major illicit drug producing or transit country

Before the President begins the process of determining whether the conduct of a particular country warrants the application of sanctions, he must first determine which nations meet the criteria of a major illicit drug producing or drug transit country. The President will base his determination on information contained in the Department of State's (March 1st) annual International Narcotics Control Strategy Report (INCSR) and whether individual country data meets the statutory criteria of a major illicit drug producing or transit country.

Major illicit drug producing or drug transit countries are defined by statute as: (1) those producing more than five metric tons of opium or opium derivative in a year -- or more than 500 metric tons of marijuana in a year; (2) those which are a significant direct source of illicit or psychotropic drugs; (3) those through which such drugs are transported; or (4) those through which significant sums of drug money are laundered with the knowledge or complicity of the government.[2]

Once the President determines that a nation is a major illicit drug producing or drug transit country, he is required to withhold 50% of U.S. foreign assistance at the start of the fiscal year [October 1st] and to direct U.S. executive directors at various international financial institutions to

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[2]See Section 481 (i) (2) and (5) of the Foreign Assistance Act of 1961. Note that on February 28, 1987, the President determined the following 24 nations to be major foreign illicit drug producing or drug transit countries: Afghanistan, the Bahamas, Belize, Bolivia, Brazil, Burma, Colombia, Ecuador, Hong Kong, India, Iran, Jamaica, Laos, Lebanon, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Paraguay, Peru, Syria, and Thailand. [See Appendix IV: Presidential Determination 87-9.]

vote against loans to the country.[3] These sanctions will continue in force for six months at which time the President reassesses the situation and sets in motion an Executive-Legislative review process that determines whether these sanctions should continue.[4]

Exempting Countries from Sanctions

On March 1st, in conjunction with release of the Department of State's Annual International Narcotics Control Strategy Report,[5] the President will submit to the Congress a Presidential Decision Memorandum which contains determinations of certification (or refusals to certify) for a list of major illicit drug-producing and drug-transit countries.[6]

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[3]Note that the certification process affects approximately 10% of the U.S. foreign aid budget for fiscal year 1988 and an even higher fraction of the amount appropriated for bilateral U.S. assistance. On October 1, 1987, roughly one and one half billion dollars in U.S. assistance were suspended by this process.

[4]In extraordinary circumstances, where the vital national interests of the United States require release of funds before March 1, the President may submit a certification in advance of March 1. See: Congressional Record. Explanatory statement of Senator Richard G. Lugar. Vol. 132, N. 144 Part II. October 17, 1986. p. S16917. However, if the certification is submitted at any time other than March 1 (either before or after), then a joint congressional resolution of approval is required for certification to go into effect. Thus, if certification is submitted at any time other than March 1, it will not go into effect unless the Congress takes positive action approving it. In contrast, certifications submitted on March 1st automatically become effective if not disapproved by Congress.

[5]The report, prepared by the Department of States' Bureau of International Narcotics Matters, provides an annual review of the adequacy of international narcotics control measures by each narcotics source and trafficking country deemed to be of significance. A September mid-year update follows each report in 6 month increments.

[6]Unless a country manages to be certified by September 30 (the end of the fiscal year), it loses the 50 percent assistance which is being withheld and presumably the funds will be reprogrammed to other countries. As a practical matter however, certification must be given by September 15, or the 50 percent aid withheld will be lost to it. This is to allow 15 days time for the Department of State to arrange for reprogramming. See Appendix IV: Presidential Determination 87-9 for the 1987 list of countries certified (and not certified).

The President may justify a determination of certification which is not based on vital national interest on two grounds: (1) that a country has fully cooperated with the United States in curbing illicit narcotics and/or has taken adequate remedial steps on its own with regard to preventing drug production, drug processing, drug trafficking, and drug related money laundering[7]; or (2) tnat the United States vital national interest precludes the continuation of sanctions. By issuing this determination of certification, the President restores aid to these major illicit drug-producing and trafficking countries, exempts them from trade related sanctions, and from the provision requiring the U.S. to vote against multilateral development bank loans.[8]

Submission of this determination of certification releases the 50 percent assistance previously withheld, and permits the balance of assistance to be obligated, unless the Congress, within 45 days by joint resolution, disapproves the President's certification.

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[7]Note also that beginning with certifications for fiscal year 1989, a country may not be deemed as "cooperating fully" unless it has a bilateral narcotics agreement in effect with the United States. On March 1, 1989, the statutory criteria being applied will read "taken adequate steps on its own in satisfying the goals agreed to in a bilateral narcotics agreement with the United States" in addition to "adequate steps" with regard to drug production, processing, trafficking, and money laundering. [Emphasis provided.] See the Continuing Appropriations Act [H.J. Res 395] Title V, Section 585(a) of the Foreign Operations, Export Financing, and Related Programs Appropriation Act, 1988 [P.L. 100-202]. Under Section 585(a), participation "in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement" qualify under the definition of "bilateral narcotics agreement" for purposes of certification under Section 481(h)(2)(A) of the Foreign Assistance Act of 1961.

Note also that Congress may enact additional criteria to be considered in making determinations for specific countries as it deems necessary. Such additional criteria were enacted for use in making certification determinations for Jamaica, Peru, and Bolivia by the Continuing Appropriations Act [H.J. Res. 395], Title V, Sec. 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [P.L. 100-202]. These requirements may be found in Appendix IID. of this study.

[8]Sec. 2005 of P.L. 99-570.

Factors the President Considers in the Determination to Exempt a Major Illicit Drug Producing or Transit Country from Sanctions

The law further requires that the President, when making a determination of certification, "give foremost consideration to whether the actions of the government...have resulted in maximum reductions in illicit drug production which were determined to be achievable...[emphasis provided]"[9] However, Congress seems to be increasingly looking to law enforcement cooperation as one of the major criteria justifying continued foreign aid for major illicit narcotic producing or transit countries. This trend is reflected in statutory language that directs the President to consider other factors, in addition to reductions in illicit production. These other factors include:

(1) enforcement to the maximum extent possible of the elimination of illicit cultivation and the suppression of illicit manufacture and trafficking -- as evidenced by seizures, arrests and prosecution of violators, and

(2) elimination, to the maximum extent possible, of laundering in that country of drug related proceeds -- factors that might be measured through:

(a) the enactment of prohibiting legislation, (such as anti-conspiracy, asset seizure, and money laundering related legislation),

(b) the willingness to enter into mutual legal assistance treaties, and,

(c) cooperation with U.S. efforts to halt money laundering.[10]

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[9]Section 481(h)(3) of the Foreign Assistance Act. Each year, the Department of State's March 1st annual International Narcotics Control Strategy Report (INCSR) contains determinations of maximum reductions in illicit drug production which are achievable in the next calendar year. These estimates then serve as guidelines for evaluation of country conduct the following March 1st when a determination of certification is issued. See: section 481(e)(4) of the Foreign Assistance Act of 1961.

[10]See Section 481(h)(3)(A) and (B) of the Foreign Assistance Act of 1961. In essence, these other, or secondary, statutory criteria require a determination of whether a country has taken the legal and law enforcement measures deemed necessary to support and sustain an effective narcotics control program.

More recent legislative changes provide that, beginning with fiscal year 1989, a country which was in the previous year designated as a major illicit drug producing or transit country may not be deemed as cooperating fully [i.e. may not be certified on the basis of cooperation] unless it has a bilateral narcotics agreement with the United States in effect.[11]

Climactic, geographic, political, economic, and social factors affecting illicit drug production are also highlighted under the law.[12] Thus, the Department of State, when applying the above criteria as the basis for its recommendations of certification to the President, considers each country's "relative capability" to achieve maximum reductions in production and to develop and enact the legal and law enforcement measures contemplated under the statute.[13] U.S. Department of State officials charged with making certification recommendations stress that the statutory requirement is "to certify cooperation, not success". In the words of the Assistant Secretary of State For International Narcotics Matters:

> ...any logical assessment of a country's performance must be based upon a concept of variability. Section 481 [in subsection (f)] has appropriately recognized since 1983 that our analysis should include the social, political, economic, geographic and climatic factors that affect illicit drug production. We have applied those factors to our essential consideration of what was a country asked to do, and what realistic capability did it have to achieve those objectives. The inescapable fact is that countries are at different states

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[11]Such agreements may relate to narcotics control programs and/or law enforcement cooperation. See the Continuing Appropriations Act, Fiscal Year 1988, [H.J. Res 395], Title V, Section 585(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [P.L. 100-202] reproduced in Appendix IIC. of this report. As of February 1988, the United States had special bilateral narcotics agreements in effect with most major illicit drug producing and transit countries. Notably absent were Hong Kong, India, Lebanon, Morocco, and Nigeria.

[12]Section 481(d)(f)(3) of the Foreign Assistance Act of 1961.

[13]U.S. Department of State, International Narcotics Control Strategy Report, March 1, 1987, pp. 8-9.

of preparedness and capability to address narcotics production and trafficking.[14]

III. CONGRESSIONAL REVIEW OF THE PRESIDENT'S CERTIFICATION: OPTIONS FOR ACTION

Congress has a number of options available, following receipt on March 1, of the President's determination of certification. Congress may consider the content of the Department of State's annual International Narcotics Control Status Report and consult with Department officials over the report's findings as they relate to the President's determinations of certification.

Congressional committees may also hold hearings at which lawmakers can express their concerns and views and Administration officials can further justify their findings. Since the reporting period covered in the Report is based on the past calendar year's performance of countries, hearings offer Congress an opportunity to consider relevant data or information on events which come after the end of the reporting period.[15] Although the law does not require consideration of such new information, authors of the statute intended such a review and it has become the practice of both the Department of State and the Congress.[16] Thus, information on current and future policies, plans, and activities will be available to both Congressional and Executive Branch

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[14]Identical prepared segments of testimony by Ann. B. Wrobleski, Assistant Secretary, Bureau of International Narcotics Matters, Department of State, before the House Task Force on International Narcotics Control, March 5, 1987, March 18, 1987, and before the Senate Foreign Relations Committee, March 16, 1987.

[15]Note that Sec. 481(e)(2)(C) of the Foreign Assistance Act of 1961 specifies the reporting period as the past fiscal year. However, in practice, the calendar year is used because foreign governments and U.S. law enforcement agencies assemble their aggregate data based on a calendar year.

[16]See: Congressional Record. Explanatory statement of Senator Richard G. Lugar. Vol. 132, No. 144, Part II. October 17, 1986. p. S1619.

policy makers involved in the certification process and will become part of the nexus of data forming the basis for country certification.

Congress may also debate and act on a joint resolution to disapprove a Presidential determination of certification. To be effective, however, such a joint resolution must pass both houses of Congress within 45 days after congressional receipt of the President's determination.[17] The President could then veto a joint resolution of disapproval and Congress would then require a 2/3 majority to override the veto.

In the case of a country where Congress had previously disapproved certification, if the President recertifies at a time other than March 1st, lawmakers must approve a joint resolution to reinstate the assistance and trade benefits currently being withheld.

IV. IMPACT OF NON-CERTIFICATION

If the President does not issue a determination of certification for a major drug producing or transit country, or if the Congress disapproves his determination of certification for a specific country, some sanctions will be imposed automatically, while others may be implemented at the discretion of the President.

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[17]Note that the statute does not specify 45 "legislative" days, nor does it provide for expedited congressional procedures to consider such a joint resolution.

Mandatory sanctions include:[18]

-- 50% suspension of U.S. assistance for the current fiscal year[19,20]

-- 100% suspension of U.S. assistance for subsequent fiscal years (unless the country is certified in the interim)[19,20]

-- Voting against loans to a country in the multilateral development banks[20]

-- non-allocation of a sugar quota to a country whose government is involved in illicit narcotics trade, or which fails to cooperate with U.S. narcotics enforcement activities.[21]

Discretionary sanctions include:

-- Denial of preferential tariff treatment to a country's exports under the Generalized System of Preferences [GSP], the Caribbean Basin Economic Recovery Act, and any other law providing preferential tariff treatment.[22]

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[18]Note that under Section 614 of the Foreign Assistance Act of 1961, the President may authorize the furnishing of assistance without regard to this Act or related acts if it is important to the security interests of the United States to do so. In this context, no sanctions are "mandatory" in the fullest sense of the word. However, use of this Presidential escape hatch would be carefully scrutinized by Congress and hence would not be generally used to thwart Congressional intent on narcotics sanctions.

[19]The Foreign Assistance Act defines the types of "United States assistance" which may be withheld as the result of a determination of non-certification. A broad definition is given to the term assistance which includes "assistance of any kind which is provided by grant, sale, loan, lease, credit, or insurance, or by any other means" by the United States Government. Specifically excluded from suspension under the certification process are: (1) international narcotics control assistance; (2) disaster relief assistance; (3) food and medical assistance; (4) assistance for refugees; (5) assistance from the child survival fund, and (6) assistance pursuant to the National Security Act and related legislation and directives.

[20]See generally Section 481(h)(1)(A) and (B) and Section 481(h)(5) of the Foreign Assistance Act of 1961.

[21]Section 803 of the Trade Act of 1974. Note that although the criteria here are not identical to the criteria for certification, a country not meeting these criteria can hardly be expected to be certified as having "cooperated fully" or having "taken adequate steps" against drug activities. Thus, a country not certified, or certified for reasons of "vital national interests", will be denied a sugar quota under this provision of the law.

[22]Section 802 of the Trade Act of 1974.

-- duty increases of up to 50% on the value on a country's U.S. export items which are currently duty free.[22]

-- duty increases of up to 50% on the value of a country's U.S. export items which are currently subject to duty.[22]

-- curtailment of air transportation and traffic between the U.S. and the non-certified country.[22]

-- withdrawal of U.S. participation in any pre-clearance customs arrangements with the non-certified country.[22]

V. PAST CONGRESSIONAL RESOLUTIONS TO DISAPPROVE CERTIFICATION, AND THEIR LEGISLATIVE OUTCOME

In the 100th Congress, first session, three joint resolutions disapproving certification of the Bahamas, Mexico, and Panama were introduced in the Senate following Congressional receipt of the President's certification determination for these countries on or about March 3, 1987.[23] The resolution disapproving certification of Panama[24] passed the Senate on April 3, 1987 but the House failed to consider it within the required statutory time (then 30 legislative days, currently 45 days). The Senate did not act on the resolutions of disapproval for the Bahamas and Mexico.

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[23]S.J. Res. 90, 91 and 92. See. Senate Reports 100-24, 25 and 26.

[24]S.J. Res. 91. See Appendix III for text.

APPENDIX I

Determination of Certification Timetable

Month:	Action
October	Department of State cables diplomatic posts reminding them that Annual Narcotics Control Status Reports are due December 1st. These reports form the basis for the comprehensive annual International Narcotics Control Strategy Report (INCSR) which provides the factual basis for identification of major illicit drug producing and trafficking countries and for subsequent determinations of certification.
December-mid-January	Country narcotics status reports are received and evaluated by the Department of States Bureau of International Narcotics Matters (INM).
Late January-early February	Interagency group chaired by Department of State (INM) reviews data from posts and coordinates drafting of INCSR and an executive summary. Draft of the INCSR is circulated for comments to agencies and bureaus represented in the group.
February	State Department reviews comments and finalizes INCSR. Agency comments are included.
March 1st	INCSR is released and transmitted to the Congress together with a Presidential determination listing countries certified, those not certified, and whether certification is based on full cooperation, adequate steps taken, or vital national interest. Congress has 45 legislative days to pass a joint resolution disapproving a Presidential determination should it so desire.
Early March	President initiates Agency & Department consultations with members of the Senate Foreign Relations Committee and House Foreign Affairs Committee on U.S. policy as it relates to the INCSR's contents.
March-early April	Congressional Committees may hold hearing to review INCSR and Presidential determinations of certification as well as determinations in INCSR relating to maximum reductions in illicit production achievable during the next fiscal year.
September	Mid-year update to the INCSR is prepared by the Department of State.

APPENDICES IIA-D: Legislation

Appendix IIA. Certification & Sanctions: Sections 481-485 of the Foreign Assistance Act of 1961

International Narcotics Control *

Partial text of Public Law 87-195 [The Foreign Assistance Act of 1961, as Amended; S. 1983] 75 Stat. 424, approved September 4, 1961

AN ACT To promote the foreign policy, security, and general welfare of the United States by assisting peoples of the world in their efforts toward economic development and internal and external security, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Foreign Assistance Act of 1961."

* * * * * * *

Chapter 8—International Narcotics Control [1]

Sec. 481.[2] International Narcotics Control.—(a)[3] (1) It is the sense of the Congress that—

(A) under the Single Convention on Narcotic Drugs, 1961, each signatory country has the responsibility of limiting to licit

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* Note.—Abstracted from Legislation on Foreign Relations Through 1987, Volume I, edited by Curt Tarnoff, Winston Woodland, et. al., House Committee on Foreign Affairs and Senate Committee on Foreign Relations, 1988.

[1] Ch. 8 was added by sec. 109 of the Foreign Assistance Act of 1971 (Public Law 92-226, 86 Stat. 20).

For other important legislation related to narcotics control, see the International Narcotics Control Act of 1986 (title II of Public Law 99-570) and title VI of the International Security and Development Cooperation Act of 1985 (Public Law 99-83).

[2] 22 U.S.C. 2291. Sec. 481 was added by sec. 109 of the FA Act of 1971. Sec. 503 of the Foreign Relations Authorization Act of 1972 amended sec. 481 and added sec. 482. Sec. 481 formerly read as follows:

"It is the sense of the Congress that effective international cooperation is necessary to put an end to the illicit production, trafficking in, and abuse of dangerous drugs. In order to promote such cooperation, the President is authorized to conclude agreements with other countries to facilitate control of the production, processing, transportation, and distribution of narcotic analgesics, including opium and its derivatives, other narcotic drugs and psychotropics and other controlled substances as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513). Notwithstanding any other provision of law, the President is authorized to furnish assistance to any country or international organization, on such terms and conditions as he may determine, for the control of the production of, processing of, and traffic in, narcotic and psychotropic drugs. In furnishing such assistance the President may use any of the funds made available to carry out the provisions of this Act. The President shall suspend economic and military assistance furnished under this or any other Act, and shall suspend sales under the Foreign Military Sales Act and under title I of the Agriculture Trade Development and Assistance Act of 1954 with respect to any country when the President determines that the government of such country has failed to take adequate steps to prevent narcotic drugs and other controlled substances (as defined by the Comprehensive Drug Abuse Prevention and Control Act of 1970) produced or processed, in whole or in part, in such country, or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents, or from entering the United States unlawfully. Such suspension shall continue until the President determines that the government of such country has taken adequate steps to carry out the purposes of this chapter."

Under the FA Act of 1971, funds to implement sec. 481 were available from any funds made available to carry out this Act.

[3] Subsection designation "(a)" and subsec. (b) were added by sec. 11(a) of the FA Act of 1973. Subsec. (a) was subsequently amended by sec. 1003(a) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98-164; 97 Stat. 1053).

purposes the cultivation, production, manufacture, sale, and other distribution of scheduled drugs;

(B) the international community should provide assistance, where appropriate, to those producer and transit countries which require assistance in discharging these primary obligations;

(C) international narcotics control programs should include, as a priority, the progressive elimination of the illicit cultivation of the crops from which narcotic and psychotropic drugs are derived, and should also include the suppression of the illicit manufacture of and traffic in narcotic and psychotropic drugs; and

(D) effective international cooperation is necessary to control the illicit cultivation, production, and smuggling of, trafficking in, and abuse of narcotic and psychotropic drugs.

This cooperation should include the development and transmittal of plans by each signatory country to the Single Convention on Narcotic Drugs, 1961, in which illicit narcotics and psychotropic crop cultivation exists, which would advise the International Narcotics Control Board, the United Nations Commission on Narcotic Drugs, and the international community of the strategy, programs, and timetable such country has established for the progressive elimination of that cultivation.

(2) In order to promote such cooperation, the President is authorized to conclude agreements with other countries to facilitate control of the production, processing, transportation, and distribution of narcotics analgesics, including opium and its derivatives, other narcotic and psychotropic drugs, and other controlled substances.

(3) [4] In order to promote international cooperation in combatting international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implemenation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.

(4) Notwithstanding any other provision of law, the President is authorized to furnish assistance to any country or international organization, or such terms and conditions as he may determine, for the control of narcotic and psychotropic drugs and other controlled substances.

(b) [3] (1) Not later than 45 days after the end of each calendar quarter, the President shall transmit to the Speaker of the House

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[4] Par. (3) was added by sec. 2017 of Public Law 99-570; 100 Stat. 3207. Sec. 2017 redesignated the previous par. (3) as par. (4).

[3] Subsec. (b) was amended by sec. 604 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; 99 Stat. 228). It previously read:

"(b)(1) Not later than forty-five days after the date on which each calendar quarter of each year ends, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a report on the programming and obligation, on a calendar quarter basis, of funds under this chapter prior to such date.

"(2) Not later than forty-five days after the date on which the second calendar quarter of each year ends and not later than forty-five days after the date on which the fourth calendar quarter of each year ends, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a complete and detailed semiannual

Continued

of Representatives, and to the Committee on Foreign Relations of the Senate, a report on the programming and obligation, on a calendar basis, of funds under this chapter prior to the end of that quarter. The last such report for each fiscal year shall include the aggregate obligations and expenditures made, and the types and quantity of equipment provided, on a calendar quarter basis, prior to end of that fiscal year—

(A) to carry out the purposes of this chapter with respect to each country and each international organization receiving assistance under this chapter, including the cost of the United States personnel engaged in carrying out such purposes in each such country and with each such international organization;

(B) to carry out each program conducted under this chapter in each country and by each international organization, including the cost of United States personnel engaged in carrying out each such program; and

(C) for administrative support services within the United States to carry out the purposes of this chapter, including the cost of United States personnel engaged in carrying out such purposes in the United States.

(2) Not later than August 1 of each year, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a complete and detailed midyear report on the activities and operations carried out under this chapter prior to such date. Such midyear report shall include, but not be limited to, the status of each agreement concluded prior to such date with other countries to carry out the purposes of this chapter.

(c)[6] (1) No officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, notwithstanding any other provision of law. This paragraph does not prohibit an officer or employee from assisting foreign officers who are effecting an arrest.

(2) Unless the Secretary of State, in consultation with the Attorney General, has determined that the application of this paragraph with respect to that foreign country would be harmful to the na-

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report on the activities and operations carried out under this chapter prior to such date. Such semiannual report shall include, but shall not be limited to—

"(A) the status of each agreement concluded prior to such date with other countries to carry out the purposes of this chapter; and

"(B) the aggregate of obligations and expenditures made, and the types and quantity of equipment provided, on a calendar quarter basis, prior to such date—

"(i) to carry out the purposes of this chapter with respect to each country and each international organization receiving assistance under this chapter including the cost of United States personnel engaged in carrying out such purposes in each such country and with such international organization;

"(C) international narcotics control programs should include, as a priority, the progressive elimination of the illicit cultivation of the crops from which narcotic and psychotropic drugs are derived, and should also include the suppression of the illicit manufacture of and traffic in narcotic and psychotropic drugs; and

"(D) effective international cooperation is necessary to control the illicit cultivation, production, and smuggling of, trafficking in and abuse of narcotic and psychotropic drugs."

[6] Subsec. (c) was comprehensively amended and restated by sec. 2009 of Public Law 99–570; 100 Stat. 3207. Subsec. (c), the "Mansfield Amendment", was originally added by sec. 504(b) of the International Security Assistance and Arms Export Control Act of 1976 (Public Law 94–329; 90 Stat. 764).

tional interests of the United States, no officer or employee of the United States may engage or participate in any direct police arrest action in a foreign country with respect to narcotics control efforts, notwithstanding any other provision of law. Nothing in paragraph (1) shall be construed to allow United States officers or employees to engage or participate in activities prohibited by this paragraph in a country with respect to which this paragraph applies.

(3) Paragraphs (1) and (2) do not prohibit an officer or employee from taking direct action to protect life or safety if exigent circumstances arise which are unanticipated and which pose an immediate threat to United States officers or employees, officers or employees of a foreign government, or members of the public.

(4) With the agreement of a foreign country, paragraphs (1) and (2) shall not apply with respect to maritime law enforcement operations in the territorial sea of that country.

(5) No officer or employee of the United States may interrogate or be present during the interrogation of any United States person arrested in any foreign country with respect to narcotics control efforts without the written consent of such person.

(6) This subsection shall not apply to the activities of the United States Armed Forces in carrying out their responsibilities under applicable Status of Forces arrangements.

(d)[7] (1) The Secretary of State shall inform the Secretary of Health and Human Services of the use or intended use by any country or international organization of any herbicide to eradicate marihuana in a program receiving assistance under this chapter.

(2) The Secretary of Health and Human Services shall monitor the impact on the health of persons who may use or consume marihuana of the spraying of a herbicide to eradicate such marihuana in a program receiving assistance under this chapter, and if the Secretary determines that such persons are exposed to amounts of such herbicide which are harmful to their health, the Secretary shall prepare and transmit a report to the Congress setting forth such determination together with any recommendations the Secretary may have.

(3)[8] Of the funds authorized to be appropriated for the fiscal year 1982 under section 482, the President is urged to use not less than $100,000 to develop a substance that clearly and readily warns persons who may use or consume marihuana that it has been sprayed with the herbicide paraquat or other herbicide harmful to the health of such person.

(4)[8] If the Secretary of Agriculture determines that a substance has been developed that clearly and readily warns persons who may use or consume marihuana that it has been sprayed with the

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[7] Subsec. (d), as added by sec. 4 of Public Law 95-384 (92 Stat. 730) and amended by sec. 3(b) of Public Law 96-92 (93 Stat. 702), was amended and restated by sec. 502(a)(1) of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1538). Sec. 502(a) (2) and (3) of Public Law 97-113 also stipulated the conditions under which funds appropriated prior to enactment of this amendment could be utilized generally, and specifically in the case of assistance for Colombia appropriated in fiscal year 1980.

[8] Sec. 502(a)(4) of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1539) provides that para. (3) and (4) of sec. 481 "shall apply only to the extent provided in advance in an appropriations Act. For such purpose, the funds described in those paragraphs are authorized to be made available for the purposes specified in those paragraphs."

herbicide paraquat or other herbicide harmful to the health of such persons, such substance shall be used in conjunction with the spraying of paraquat or such other herbicide in any program receiving assistance under this chapter.

(e) [9] (1) Not later than March [10] 1 of each year, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a report on United States policy to establish and encourage an international strategy to prevent the illicit cultivation and manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances.

(2)(A) Each report pursuant to this subsection shall describe the policies adopted, agreements concluded, and programs implemented by the Department of State in pursuit of its delegated responsibilities for international narcotics control, including policy development, bilateral and multilateral funding and other support for international narcotics control projects, representations of the United States Government to international organizations and agencies concerned with narcotics control, training of foreign enforcement personnel, coordination of the international narcotics control activities of United States Government agencies, and technical assistance to international demand reduction programs.

(B) Each such report shall also describe the activities of the United States in international financial institutions to combat the entry of illicit narcotic and psychotropic drugs and other controlled substances into the United States.

(C) Each such report shall describe the activities for the fiscal year just ended, for the current fiscal year, and for the next fiscal year.

(3) Each such report shall identify those countries which are the significant direct or indirect sources of illicit narcotic and psychotropic drugs and other controlled substances significantly affecting the United States. For each such country, each report shall include the following:

(A) A detailed status report, with such information as can be reliably obtained, on the illicit narcotic or psychotropic drugs or other controlled substances which are being cultivated, produced, or processed in or transported through such country, noting significant changes in conditions, such as increases or decreases in the illicit cultivation and manufacture of and traffic in such drugs and substances.

(B) A description of the assistance under this chapter and the other kinds of United States assistance which such country

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[9] Subsec. (e), as added by sec. 502(b) of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1539), was amended and restated by sec. 1003(b) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98-164; 97 Stat. 1053). Par. (6) was added by sec. 606 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; 99 Stat. 229).

Sec. 804 of Public Law 99-570 (100 Stat. 3207), provides as follows:

"SEC. 804. THE PROGRAM REPORTS.—The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 229(e)(1)) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b)."

[10] Sec. 2005(b) of Public Law 99-570; 100 Stat. 3207, substituted the word "March" in lieu of "February."

received in the preceding fiscal year, which are planned for such country for the current fiscal year, and which are proposed for such country for the next fiscal year, with an analysis of the impact that the furnishing of each such kind of assistance has had or is expected to have on the illicit cultivation and manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances in such country.

(C) A description of the plans, programs, and timetables adopted by such country for the progressive elimination of the illicit cultivation of narcotic and psychotropic drugs and other controlled substances, and a discussion of the adequacy of the legal and law enforcement measures taken and the accomplishments achieved in accord with these plans.

(D) [11] A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.

(4) In addition, each report pursuant to this subsection shall include, for each major illicit drug producing country for which the President is proposing to furnish United States assistance for the next fiscal year, a determination by the President of the maximum reductions in illicit drug production which are achievable during the next fiscal year. Such determination shall be based upon (A) the measures which the country is currently taking, and the measures which the country has planned for the next fiscal year, in order to prevent narcotic and psychotropic drugs and other controlled substances from being cultivated, produced, or processed illicitly, in whole or in part in such country, from being transported through such country to United States Government personnel or their dependents, or from entering the United States unlawfully, and (B) the other information provided pursuant to this subsection.

(5) For each major illicit drug producing country which received United States assistance for the preceding fiscal year, each report pursuant to this subsection shall set forth the actual reductions in illicit drug production achieved by that country during such fiscal year.

(6) [9] Each report pursuant to this subsection shall describe the involvement of any foreign government (including any communist government) in illicit drug trafficking during the preceding fiscal year, including—

(A) the direct or indirect involvement of such government (or any official thereof) in the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, and

(B) any other activities of such government (or any official thereof) which have facilitated illicit drug trafficking.

(7) [12] Each report pursuant to this subsection shall include specific comments and recommendations by appropriate Federal agen-

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[11] Subpar. (D) was added by sec. 2008 of Public Law 99-570; 100 Stat. 3207.

[12] Paragraph (7) was added by sec. 805 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204; 101 Stat. 1331).

cies involved in drug enforcement, including the United States Customs Service and the Drug Enforcement Administration, with respect to the degree to which countries listed in the report have cooperated fully with such agencies during the preceding year as described in subsection (h).

(f) [13] As soon as possible after the transmittal of the report required by subsection (e), the designated representatives of the President shall initiate appropriate consultations with members of the Committee on Foreign Relations of the Senate and members of the Committee on Foreign Affairs of the House of Representatives. Such consultations shall include in-person discussions by designated representatives of the President (including the Assistant Secretary of State for International Narcotics Control and appropriate representatives of the Department of Health and Human Services, the Department of the Treasury, the Department of Defense, the Department of Justice, and the Agency for International Development) to review the worldwide illicit drug production situation and the role that United States assistance to major illicit drug producing countries, and United States contributions to international financial institutions, have in combating the entry of illicit narcotic and pyschotropic drugs and other controlled substances into the United States. Such consultation shall include, with respect to each major illicit drug producing country for which the President is proposing to furnish United States assistance for the next fiscal year, the furnishing of—

(1) a description of the nature of the illicit drug production problem;

(2) an analysis of the climatic, geographic, political, economic, and social factors that affect the illicit drug production;

(3) a description of the methodology employed to determine the maximum achievable reductions in illicit drug production described pursuant to subsection (e)(4); and

(4) an analysis of any additional United States assistance that would be required to achieve those reductions.

The chairman of the Committee on Foreign Relations and the chairman of the Committee on Foreign Affairs shall each cause the substance of each consultation to be printed in the Congressional Record.

(g) [13] After consultations have been initiated pursuant to subsection (f), the Committee on Foreign Relations and the Committee on Foreign Affairs should hold a hearing to review the report submitted pursuant to subsection (e), especially the determinations described in subsection (e)(4). The hearing shall be open to the public unless the committee determines, in accordance with the rules of its House, that the hearing should be closed to the public.

(h) [14] (1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under sec-

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[13] Subsecs. (f), (g), (i), and (j) were added by sec. 1003(b) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98-164; 97 Stat. 1053).

[14] Subsec. (h) was comprehensively amended and restated by sec. 2005(a) of Public Law 99-570; 100 Stat. 3207.

tion 653(a) of this Act shall be withheld from obligation and expenditure; and

(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country.

(2)(A)(i)[15] The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of paragraph (1)(B) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

(I)[16] during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in satisfying the goals agreed to in an applicable bilateral narcotics agreement with the United States, (as described in (ii)) and,[17] in preventing narcotic and psychotropic drugs and

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[15] Paragraph (2)(A) was redesignated (2)(A)(i); the former (2)(A)(i)and (ii) were redesignated (I) and (II); and a new clause (ii) was added by sec. 585 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Continuing Appropriations for 1988, Public Law 100-202, 101 Stat. 1329).

Paragraph (2) provides the conditions which must be certified by the President for assistance to be obligated and expended.

Sec. 585 of Public Law 100-202 also provides the following:

"Beginning with certifications with respect to fiscal year 1989 and each subsequent year, a country which in the previous year was designated a major drug producing or drug-transit country may not be deemed as cooperating fully unless it has in place a bilateral narcotics agreement with the United States."

Presidential Determination 87-9 of February 28, 1987 determined that Afghanistan, Iran and Syria did not meet the standards set forth in sec. 481 (h)(2)(A). Although Bolivia was found to meet the required standards under this paragraph and under sec. 611 of Public Law 99-83 (Presidential Determination 87-7 of January 5, 1987, 52 F.R. 2391), the Secretary of State determined in Public Notice 1033 (October 16, 1987, 52 F.R. 38554) that Bolivia had not met the conditions of sec. 611, and that funds withheld would be reprogrammed.

[16] In Presidential Determination 87-9 of February 28, 1987, the President determined and certified that the following major narcotics producing and/or major narcotics transit countries had met the conditions of clause (I): The Bahamas, Belize, Bolivia, Brazil, Burma, Colombia, Ecuador, Hong Kong, India, Jamaica, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Paraguay, Peru, and Thailand.

Sec. 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(a) of the Continuing Appropriations for 1988, Public Law 100-202, 101 Stat. 1329) provides the following:

"Sec. 534. (a) In making determinations with respect to Peru and Jamaica pursuant to section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961, the President shall take into account the extent to which the Government of each country is sufficiently responsive to United States Government concerns on drug control and whether the added provision of assistance for that country is in the national interest of the United States.

"(b) In making determinations with respect to Bolivia pursuant to section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961, the President shall take into account (1) the extent to which the Government of Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has continued to cooperate with the United States in such operations; and (2) whether Bolivia has either met the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has adopted a plan to eliminate illicit narcotics cultivation, production, and trafficking countrywide, and has entered into an agreement of cooperation with the United States for implementing that plan for 1988 and beyond and is making substantial progress toward the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance."

[17] The words beginning with "in satisfying" and ending at this point were added by sec. 585 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988

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other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

(II) [18] for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, or

(ii) [19] A bilateral narcotics agreement referred to in clause (i)(I) is an agreement between the United States and a foreign country whereby the foreign country agrees to take specific activities including but not limited to, efforts to reduce drug production, drug consumption, and drug trafficking within its territory, including activities to address illicit crop eradication and crop substitution; drug interdiction and enforcement; drug consumption and treatment; identification of and elimination of illicit drug laboratories; identification and elimination of the trafficking of precursor chemicals for the use in production of illegal drugs; cooperation with United States drug enforcement officials; and, where applicable, participation in extradition treaties, mutual legal assistance provisions directed at money laundering, sharing of evidence, and other initiatives for cooperative drug enforcement.

(B) If the President makes a certification pursuant to clause (A)(ii), [20] he shall include in such certification—

(i) a full and complete description of the vital national interests placed at risk should assistance or financing not be provided such country; and

(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs

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(Continuing Appropriations for 1988, Public Law 100-202, 101 Stat. 1329). Sec. 585 also provided that the amendment apply with respect to any certification of the President under section 481(h)(2)(A) of this Act made on or after March 1, 1989.

[18] Presidential Determination 87-9 of February 28, 1987 determined that it was in the vital national interest of the United States to certify Laos and Lebanon.

[19] Clause (ii) was added by sec. 585 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Continuing Appropriations for 1988, Public Law 100-202, 101 Stat. 1329). Sec. 585 also provided that clause (ii) apply with respect to any certification of the President under section 481(h)(2)(A) of this Act made on or after March 1, 1989.

[20] As a result of technical and other amendments made to paragraph (2)(A)(i) by sec. 585 of Public Law 100-202, this should probably read "(A)(II)".

and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidenced by—

(i) the enactment and enforcement of laws prohibiting such conduct, and

(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which such government otherwise co-operates with United States law enforcement authorities on anti-money laundering efforts.

(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 45 days of continuous session after receipt of a certification under paragraph (2), joint resolution disapproving the determination of the President contained in such certification. [11]

(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section or the financing described in paragraph (1)(B) of this subsection unless—

(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.

(i) [13] As used in this section—

(1) the term "legal and law enforcement measures" means—

(A) the enactment and implementation of laws and regulations or the implementation of existing laws and regulations to provide for the progressive control, reduction, and gradual elimination of the illicit cultivation, production,

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[11] Sec. 805(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204; 101 Stat. 1331) substituted the number "45" in lieu of "30".

processing, transportation, and distribution of narcotic drugs and other controlled substances; and

(B) the effective organization, staffing, equipping, funding, and activation of those governmental authorities responsible for narcotics control;

(2) the term "major illicit drug producing country" means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year;

(3) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country of countries concerned;

(4) the term "United States assistance" means assistance of any kind which is provided by grant, sale, loan, lease, credit, guaranty, or insurance, or by any other means, by any agency or instrumentality of the United States Government to any foreign country, including—

(A) assistance under this Act (including programs under title IV of chapter 2 of this part);

(B) sales, credits, and guaranties under the Arms Export Control Act;

(C) sales under title I or III and donations under title II of the Agricultural Trade Development and Assistance Act of 1954 of nonfood commodities;

(D) other financing programs of the Commodity Credit Corporation for export sales of nonfood commodities; and

(E) financing under the Export-Import Bank Act of 1945;

except that the term "United States assistance" does not include (i) international narcotics control assistance under this chapter, (ii) disaster relief assistance (including any assistance under chapter 9 of this part), (iii) assistance which involves the provision of food or medicine, (iv) assistance for refugees, (v) assistance under the Inter-American Foundation Act, (vi) [22] assistance from the Child Survival Fund under section 1049(c)(2) of this Act, or (vii) activities authorized pursuant to the National Security Act of 1947 (50 U.S.C. 410 et seq.), the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), or Executive Order Number 12333 (December 4, 1981); and

(5) [23] the term 6 major drug-transit country' means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.

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[22] The text of "(vi)" was added by sec. 2005(d) of Public Law 99-570; 100 Stat. 3207.
[23] Para. (5) was added by sec. 2005(c)(3) of Public Law 95-570; 100 Stat. 32071.

(j) [13] The Department of State shall encourage the International Narcotics Control Board and the United Nations Commission on Narcotic Drugs to take such actions as are appropriate and necessary to secure from signatory countries to the Single Convention on Narcotic Drugs, 1961, the plans described in this section, and to obtain reports from such countries on their achievements under such plans.

Sec. 482.[14] Authorization.—(a) [15] (1) To carry out the purposes of section 481, there are authorized to be appropriated to the President $57,529,000 for the fiscal year 1986 and $75,445,000 for the fiscal year 1987.[16] In addition to the amounts authorized by the

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[14] 22 U.S.C. 2291a. Sec. 482, as added by sec. 503 of the Foreign Relations Authorization Act of 1972, was amended and restated by sec. 3 of the International Security Assistance Act of 1977 (Public Law 95-92; 91 Stat. 614). It formerly read as follows:

"SEC. 482. AUTHORIZATION.—To carry out the purposes of section 481, there are authorized to be appropriated to the President $42,500,000, for each of the fiscal years 1974 and 1975, $40,000,000 for the fiscal year 1976, no part of which may be obligated for or on behalf of any country where illegal traffic in opiates has been a significant problem unless and until the President determines and certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that assistance furnished to such country pursuant to the authority in this chapter is significantly reducing the amount of illegal opiates entering the international market, and not to exceed $34,000,000 for the fiscal year 1977. Amounts appropriated under this section are authorized to remain available until expended."

[15] Subsection designation "(a)" and the last of subsec. (b) were added by sec. 5(b) of the International Security Assistance Act of 1978 (Public Law 95-384; 92 Stat. 731). Subsec. (a) was further amended and restated by sec. 3 of the International Security Assistance Act of 1979 (Public Law 96-92; 93 Stat. 701); and further amended by Sec. 402(a) of the International Security and Development Cooperation Act of 1980 (Public Law 96-533; 94 Stat. 3149). The 1980 amendment, in addition to other changes in subsection (a), struck out a paragraph which had earmarked $16 million for Colombia during fiscal year 1980 for a variety of items used in the interdiction of drug traffic. In reference to this deleted provision, sec. 402(c) of Public Law 96-533 stated:

"(c) Notwithstanding the provisions of section 482(a)(2) of the Foreign Assistance Act of 1961 as in effect immediately prior to the enactment of this Act, funds appropriated for the fiscal year 1980 to carry out the purposes of section 481 of that Act which were obligated for assistance for Colombia may be used for fixed-wing aircraft, communications equipment, and such other equipment and operational support, including aviation services, as are essential to the Colombian anti-narcotics enforcement program."

Subsec. (a) was further amended and restated when sec. 502(c) of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1539) substituted the authorization levels for fiscal years 1982 and 1983 in lieu of the figure for fiscal year 1981 and deleted a paragraph limiting the fiscal year 1981 U.S. contribution to the U.N. Fund for Drug Abuse Control to $3,000,000 or 50 percent of total contributions, whichever is less.

[16] Sec. 602 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83; 99 Stat. 228), added the authorizations for fiscal year 1986 and 1987. The authorization amount for 1987 was subsequently amended by sec. 401 of Public Law 99-529 and by sec. 2002(1) of Public Law 99-570 (100 Stat. 3207).

Congress did not enact an authorization for fiscal year 1988. Instead, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations for 1988, Public Law 100-202) waived the requirement for authorizations and appropriated the following for "International Narcotics Control":

"For necessary expenses to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $96,750,000: *Provided*, That not less than $15,000,000 of the funds appropriated under this heading shall be available for narcotics interdiction and control programs for Bolivia: *Provided further*, That in addition to amounts made available pursuant to the previous proviso, not less than $7,000,000 of the funds appropriated under this heading shall be available for Latin America regional programs."

In addition to legislation appropriating funds for 1988, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (sec. 101(e) of the Continuing Appropriations for 1988, Public Law 100-202, 101 Stat. 1329) provided the following:

"NARCOTICS CONTROL REPORTING

"SEC. 526. None of the funds appropriated or otherwise made available under this Act may be available for any country during any three-month period beginning on or after October 1, 1989, immediately following a certification by the President to the Congress that the government of such country is failing to take adequate measures to prevent narcotic drugs or other controlled substances (as listed in the schedules in section 202 of the Comprehensive Drug Abuse and Prevention Control Act of 1971 (21 U.S.C. 812)) which are cultivated, produced, or processed illicitly,

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preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year to 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less that $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under this chapter. These funds shall be used primarily for aircraft which will be based in Latin America for use for narcotics control eradication and interdiction efforts throughout the region. These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts. [27]

(2) Amounts appropriated under this subsection are authorized to remain available until expended.

(3) [28] Funds authorized to be appropriated by this section for fiscal year 1986 and for fiscal year 1987 may be used for a contribution to the United Nations Fund for Drug Abuse Control only if that organization includes in its crop substitution projects a plan for cooperation with the law enforcement forces of the host country.''.

(b) [25] Funds authorized to be appropriated by this section shall not be made available for the procurement of weapons or ammunition under this chapter.

(c) [29] Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, section 508 of the General Government Matters,

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in whole or in part, in such country, or transported through such country from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from entering the United States unlawfully.

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"COUNTRIES WITH ILLICIT DRUG PRODUCTION—TRANSFER OF FUNDING

"Sec. 549. If any funds appropriated by this Act for "Economic Support Fund", "Military Assistance", "International Military Education and Training", or "Foreign Military Credit Sales" are not used for assistance for the country for which those funds were allocated because that country has not taken adequate steps to halt illicit drug production or trafficking, those funds shall be reprogrammed for additional assistance for those countries which have met their illicit drug eradication targets or have otherwise taken significant steps to halt illicit drug production or trafficking.

"NARCOTICS AGREEMENTS

"Sec. 585. * * *

"(e) Beginning with certifications with respect to fiscal year 1989 and each subsequent year, a country which in the previous year was designated a major drug producing or drug-transit country may not be deemed to cooperating fully unless it has in place a bilateral narcotics agreement with the United States."

Authorizations under sec. 482 during recent years included the following: Fiscal year 1975—$42,500,000; Fiscal year 1976—$40,000,000; Fiscal year 1977—$34,000,000; Fiscal year 1978—$39,000,000; Fiscal year 1979—$40,000,000; Fiscal year 1980—$51,758,000; Fiscal year 1981—$38,573,000; Fiscal year 1982—$37,700,000; Fiscal year 1983—$37,700,000; Fiscal year 1984—$47,000,000; Fiscal year 1985—no authorization.

[27] The text of subsec. (a)(1), beginning with the words "In addition" and ending with this note, was added by sec. 2002(2) of Public Law 99-570 (100 Stat. 3207).

[28] Para. (3) was added by sec. 614 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83, 99 Stat. 231).

[29] Subsec. (c) was added by sec. 402(b) of the International Security and Development Cooperation Act of 1980 (Public Law 96-533; 94 Stat. 3149).

Department of Commerce, and Related Agencies Appropriation Act, 1962, and section 105 of the Agricultural Trade Development and Assistance Act of 1954, up to the equivalent of $10,000,000 in currencies or credits of the Government of Pakistan held by the United States shall, to such extent as may be provided in an appropriation Act, be available to the President for the fiscal year 1981 (and shall remain available until expended) to carry out the purposes of section 481 through assistance to the Government of Pakistan. Notwithstanding any other provision of law, the availability or expenditure of such foreign currencies shall not affect or reduce appropriations otherwise available to carry out the administration of the international narcotics control program.

(d) [30] Assistance may be provided under this chapter to a foreign country only if the country provides assurances to the President, and the President is satisfied, that the country will provide at least 25 percent of the costs of any narcotics control program, project, or activity for which such assistance is to be provided. The costs borne by the country may include "in-kind" contributions.

Sec. 483.[31] Prohibition on Use of Foreign Assistance for Reimbursements for Drug Crop Eradications.—Funds made available to carry out this Act may not be used to reimburse persons whose illicit drug crops are eradicated.

Sec. 484. [32] Retention of Title to Aircraft.—Any aircraft which, at any time after the enactment of this section, are made available to a foreign country under this chapter, or are made available to a foreign country primarily for narcotics-related purposes under any other provision of law, shall be provided only on a lease or loan basis.

Sec. 485.[32] Records of Aircraft Use.—(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to a foreign country under this chapter, including aircraft made available before the enactment of this section.

(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.

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[30] Subsec. (d) was added by sec. 608 of Public Law 99–83, 99 Stat. 229.
[31] Sec. 483 was added by sec. 609 of Public Law 99–83, 99 Stat. 230.
[32] Secs. 484 and 485 were added by sec. 2003 of Public Law 99–570; 100 Stat. 3207.

Appendix IIB. Certification and Sanctions: Title VIII of the Trade Act of 1974, as amended[25]

TITLE VIII—TARIFF TREATMENT OF PRODUCTS OF, AND OTHER SANCTIONS AGAINST, UNCOOPERATIVE MAJOR DRUG PRODUCING OR DRUG-TRANSIT COUNTRIES

SEC. 801. SHORT TITLE.

This title may be cited as the "Narcotics Control Trade Act".

SEC. 802. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE MAJOR DRUG PRODUCTING OR DRUG-TRANSIT COUNTRIES.

(a) REQUIRED ACTION BY PRESIDENT.—Subject to subsection (b), for every major drug producing country and every major drug-transit country, the President shall, on or after March 1, 1987, and March 1 of each succeeding year, to the extent considered necessary by the President to achieve the purpose of this title—

(1) deny to any or all of the products of that country tariff treatment under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment;

(2) apply to any or all of the dutiable products of that country an additional duty at a rate not to exceed 50 percent ad valorem or the specific rate equivalent;

(3) apply to one or more duty-free products of that country a duty at a rate not to exceed 50 percent ad valorem;

(4) take the steps described in subsection (d)(1) or (d)(2), or both, to curtail air transportation between the United States and that country;

(5) withdraw the personnel and resources of the United States from participation in any arrangement with that country for the pre-clearance of customs by visitors between the United States and that country; or;

(6) take any combination of the actions described in paragraphs (1) through (5).

(b) CERTIFICATIONS; CONGRESSIONAL ACTION.—(1) Subsection (a) shall not apply with respect to a country if the President determines and so certifies to the Congress, at the time of the submission of the report required by section 481(e) of the Foreign Assistance Act of 1961, that during the previous year that country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing corruption by government officials and the laundering in that country of drug-related profits or drug-related monies.

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[25] Partial text of Public Law 93-618 [H.R. 10710], 88 Stat. 1978, approved January 3, 1975. Title VIII was added by Title IX of the Anti-Drug Abuse Act of 1986, Public Law 99-570, 100 Stat. 3207. Section 802 of the Act was amended by Section 808 of the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989 [P.L. 99-204].

(2) In making the certification required by paragraph (1), the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to section 481(e)(4) of the Foreign Assistance Act of 1961. The President shall also consider whether such government—

(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States;

(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidence by—

(i) the enactment and enforcement of laws prohibiting such conduct,

(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts; and

(C) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, corruption by government officials, with particular emphasis on the elimination of bribery.

(3) Subsection (a) shall apply to a country without regard to paragraph (1) of this subsection if the Congress enacts, within 30 days [2] of continuous session after receipt of a certification under paragraph (1), a joint resolution disapproving the determination of the President contained in that certification.

(4) If the President takes action under subsection (a), that action shall remain in effect until—

(A) the President makes the certification under paragraph (1), a period of 30 days of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproval; or

(B) the President submits at any other time a certification of the matters described in paragraph (1) with respect to that country, a period of 30 days [2] of continuous session of Congress elapses, and during that period the Congress does not enact a joint resolution of disapproving the determination contained in that certification.

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[2] Note: that this period was changed to 45 days for purposes of section 481(h) of the Foreign Assistance Act of 1961 by Section 805(b) of the Foreign Relations Authorization Act, Fiscal Years, 1988 and 1989 (P.L. 100-204). A comparable amendment for the Trade Act of 1974 was apparently overlooked at that time.

(4) For purposes of this subsection, the terms "air transportation", "air carrier", "foreign air carrier" and "foreign air transportation" have the meanings such terms have under section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301).

SEC. 803. SUGAR QUOTA.

Notwithstanding any other provisions of law, the President may not allocate any limitation imposed on the quantity of sugar to any country which has a Government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 802(b) as determined by the President.

SEC. 804. PROGRESS REPORTS.

The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1) an evaluation of progress that each major drug producing country and each major drug-transit country has made during the reporting period in achieving the objectives set forth in section 802(b).

SEC. 805. DEFINITIONS.

For purposes of this title—

(1) continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the period indicated;

(2) the term "major drug producing country" means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year; and

(3) the term "major drug-transit country" means a country—

(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

(B) through which are transported such drugs or substances; or

(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government; and

(4) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned.

* * * * * * *

(5) For the purpose of expediting the consideration and enactment of joint resolutions under paragraphs (3) and (4)—

(A) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Ways and Means shall be treated as highly privileged in the House of Representatives; and

(B) a motion to proceed to the consideration of any such joint resolution after it has been reported by the Committee on Finance shall be treated as privileged in the Senate.

(c) DURATION OF ACTION.—The action taken by the President under paragraph (1), (2), or (3) of subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that such action is in effect.

(d) PRESIDENTIAL ACTION REGARDING AVIATION.—

(1)(A) The President is authorized to notify the government of a country against which is imposed the sanction described in subsection (a)(4) of his intention to suspend the authority of foreign air carriers owned or controlled by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(B) Within 10 days after the date of notification of a government under subparagraph (A), the Secretary of Transportation shall take all steps necessary to suspend at the earliest possible date the authority of any foreign air carrier owned or controlled directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States, notwithstanding any agreement relating to air services.

(C) The President may also direct the Secretary of Transportation to take such steps as may be necessary to suspend the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(2)(A) The President may direct the Secretary of State to terminate any air service agreement between the United States and a country against which the sanction described in subsection (a)(4) is imposed in accordance with the provisions of that agreement.

(B) Upon termination of an agreement under this paragraph, the Secretary of Transportation shall take such steps as may be necessary to revoke at the earliest possible date the right of any foreign air carrier owned, or controlled, directly or indirectly, by the government or nationals of that country to engage in foreign air transportation to or from the United States.

(C) Upon termination of an agreement under this paragraph, the Secretary of Transportation may also revoke the authority of any air carrier to engage in foreign air transportation between the United States and that country.

(3) The Secretary of Transportation may provide for such exceptions from paragraphs (1) and (2) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers is threatened.

Appendix IIC. Certification & Sanctions: Section 585 (c) of the Foreign Operations, Export Financing and Related Program Appropriations Act, 1988 [P.L. 100-202]

NARCOTICS AGREEMENTS

Sec. 585 (a) ...

(b) ...

(c) Beginning with certifications with respect to fiscal year 1989 and each subsequent year, a country which in the previous year was designated a major drug producing or drug-transit country may not be deemed as cooperating fully unless it has in place a bilateral narcotics agreement with the United States.

Appendix IID. Special Certification Guidance for Jamaica, Peru, and Bolivia: Section 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [P.L. 100-202]

LIMITATIONS RELATED TO DRUG CONTROL IN JAMAICA, PERU, AND BOLIVIA

Sec. 534. (a) In making determinations with respect to Peru and Jamaica pursuant to section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961, the President shall take into account the extent to which the Government of each country is sufficiently responsive to United States Government concerns on drug control and whether the added provision of assistance for that country is in the national interest of the United States.

(b) In making determinations with respect to Bolivia pursuant to section 481(h)(2)(A)(i)(I) of the Foreign Assistance Act of 1961, the President shall take into account (1) the extent to which the Government of Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has continued to cooperate with the United States in such operations; and (2) whether Bolivia has either met the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has adopted a plan to eliminate illicit narcotics cultivation, production, and trafficking country-wide, and has entered into an agreement of cooperation with the United States for implementing that plan for 1988 and beyond and is making substantial progress toward the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

APPENDIX III

Sample Joint Resolution to Disapprove Certification: S.J. RES. 91, 100th Congress, 1st Session

100TH CONGRESS
1ST SESSION

S. J. RES. 91

Disapproving the certification by the President under section 481(h) of the Foreign Assistance Act of 1961.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 1987

Mr. KERRY (for himself, Mr. HELMS, Mr. MCCONNELL, Mr. D'AMATO, and Mr. WILSON) introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

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JOINT RESOLUTION

Disapproving the certification by the President under section 481(h) of the Foreign Assistance Act of 1961.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby disapproves of the determination of the President with respect to Panama as contained in the certification required by section 481(h) of the Foreign Assistance Act of 1961, received by the Congress on March 2, 1987.

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APPENDIX IV: PRESIDENTIAL DETERMINATION 87-9

THE WHITE HOUSE

WASHINGTON

February 28, 1987

Presidential Determination
No. 87-9

MEMORANDUM FOR THE SECRETARY OF STATE

SUBJECT: Certifications for Narcotics Source and Transit Countries under P.L. 99-570

By virtue of the authority vested in me by Section 481(h)(2)(A)(i) of the Foreign Assistance Act of 1961, as amended by the Anti-Drug Abuse Act of 1986 (P.L. 99-570) (the Act), I hereby determine and certify that the following major narcotics producing and/or major narcotics transit countries have cooperated fully with the United States, or taken adequate steps on their own, to control narcotics production, trafficking and money laundering:

The Bahamas, Belize, Bolivia, Brazil, Burma, Colombia, Ecuador, Hong Kong, India, Jamaica, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Paraguay, Peru, and Thailand.

By virtue of the authority vested in me by Section 481(h)(2)(A)(ii) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following countries:

Laos and Lebanon.

Information for these two countries required under Section 481(h)(2)(B) of the Act is enclosed.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in Section 481(h)(2)(A):

Afghanistan, Iran, and Syria.

In making these determinations, I have considered the factors set forth in Section 481(h)(3) of the Act, based on the information in the International Narcotics Control Strategy Report of 1987.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the Federal Register.

Ronald Reagan

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